

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 315 Adoption
SPONSOR(S): Health Care Services Policy Committee; Horner and others
TIED BILLS: IDEN./SIM. BILLS: SB 530

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Health Care Services Policy Committee, 14 Y, 0 N, As CS, Schoonover, Schoolfield. Row 2: Health & Family Services Policy Council, Quinn-Gato, Gormley.

SUMMARY ANALYSIS

The bill amends ch. 63, F.S., to prohibit an adoption agency or entity, whether public or private, from making adoption suitability determinations based on the lawful possession, storage, or use of a firearm or ammunition. The bill also prohibits an adoption agency or entity from requiring the adoptive parent or prospective adoptive parent to disclose such firearm and ammunition information. Further the bill restricts the adoption agency or entity from restricting the lawful possession, storage, or use of a firearm or ammunition as a condition for a person to adopt. The bill also requires, as a condition of licensure, that child placing agencies comply with statutory requirements relating to the regulation of firearms and increases the Department of Children and Families' ("DCF") authority to deny, suspend or revoke a license of a child placing agency based on failure to comply with these sections of law. Finally, CS/HB 315 requires DCF to adopt a form on which prospective adoptive parents will acknowledge the receipt of verbatim statutory language relating to the safe storage of firearms.

The bill does not appear to have a fiscal impact on state or local governments.

The bill is effective upon becoming law.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### Background

##### *Adoption*

Ch. 63, F.S., known as the Florida Adoption Act, applies to all adoptions, both public and private, involving the following entities: Department of Children and Families (DCF); child-caring agencies registered under s. 409.176; an intermediary such as an attorney; or a child-placing agency licensed in another state which is qualified by DCF to place children in Florida.

The Legislature's intent is to provide stable and permanent homes for adoptive children in a prompt manner, to prevent the disruption of adoptive placement, and to hold parents accountable for meeting the needs of children.<sup>1</sup> It is also the intent of the Legislature that in every adoption, the child's best interest should govern the court's determination in placement, with the court making specific findings as to those best interests.<sup>2</sup> The Legislature also intends to protect and promote the well-being of the persons being adopted.<sup>3</sup> Safeguards are established to ensure that that the minor is legally free for adoption, that the required persons consent to the adoption, or that the parent-child relationship is terminated by judgment of the court.<sup>4</sup>

DCF promulgated several administrative rules related to the recruitment, screening, application, and evaluation process of adoptive parents.<sup>5</sup> Prospective adoptive parents are required to execute an adoption application – either DCF form CF-FSP 5071, which is incorporated by reference in DCF rules, or an adoption application in a format created by a community based care provider that contains “all of the elements of CF-FSP 5071.”<sup>6</sup> Form CF-FSP 5071 requests necessary identifying information from prospective adoptive parents, but does not request any information regarding the prospective adoptive parents' ownership or possession of firearms or ammunition. Additionally, while DCF rules address firearm and ammunition storage requirements for licensed out-of-home caregivers,<sup>7</sup> Chapter 65C-16 of

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<sup>1</sup> s. 63.022(1)(a), F. S.

<sup>2</sup> s. 63.022(2), F.S.

<sup>3</sup> s. 63.022(3), F.S.

<sup>4</sup> s. 63.022(4), F.S.

<sup>5</sup> 65C-16.001 - 65C-16.007, F.A.C.

<sup>6</sup> 65C-16.004(5), F.A.C.

<sup>7</sup> 65C-13.030(5)(h)(6), F.A.C. This rule is addressed more fully in the “Firearms and Ammunition” section of this analysis.

the Florida Administrative Code does not provide for the evaluation of prospective adoptive parents' ownership of firearms or ammunition by adoption agencies.<sup>8</sup> However, some adoption agencies in Florida have added questions regarding prospective adoptive parents' possession and storage of firearms and ammunition to the adoptive home study evaluation process.<sup>9</sup>

A preliminary home study to determine the suitability of the intended adoptive parents is required prior to placing the minor into an intended home, and may be completed prior to identifying a prospective adoptive minor.<sup>10</sup> The preliminary home study must be performed by a licensed child-placing agency, a registered child-caring agency, a licensed professional, or an agency described in s.61.20(2), F.S.<sup>11</sup> The preliminary home study must include, at a minimum, the following:<sup>12</sup>

- Interview with the intended adoptive parents
- Records checks of DCF's central abuse hotline
- Criminal history check through FDLE and FBI
- Assessment of the physical environment of the home
- Determination of the financial security of the intended adoptive parents
- Proof of adoptive parent counseling and education
- Proof that information on adoption and the adoption process has been provided
- Proof that information on support services available has been provided
- Copy of each signed acknowledgement of receipt of adoption entity disclosure forms

A favorable home study is valid for one year after the date of its completion.<sup>13</sup>

Following a favorable preliminary home study, a minor may be placed in the home pending entry of the judgment of adoption by the court. If the home study is unfavorable, placement shall not occur and the adoption entity, within 20 days of receiving the written recommendation, may petition the court to determine the suitability of adoption.<sup>14</sup>

In order to ascertain whether the adoptive home is a suitable home for the minor and is in the best interest of the child, a final home investigation must be conducted before the adoption is concluded. The investigation is conducted in the same manner as the preliminary home study.<sup>15</sup> Within 90 days after placement of the child, a written report of the final home investigation must be filed with the court and the petitioner.<sup>16</sup> The report must contain an evaluation of the placement with a recommendation on the granting of the petition for adoption.<sup>17</sup>

The final home investigation must include:<sup>18</sup>

- Information from preliminary home study
- Following the minor's placement, two scheduled visits with the minor and the minor's adoptive parent or parents. One visit must be in the home to determine suitability of the placement
- Family social and medical history
- Other information relevant to suitability of placement
- Information required by rules promulgated by DCF

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<sup>8</sup> 65C-16.005, F.A.C.

<sup>9</sup> On 11-11-2009, Children's Home Society of Florida, a licensed adoption agency, issued a memo instructing staff to no longer make nor keep any list, record, or registry of privately owned firearms or any list, record, or registry of the owners of those firearms.

<sup>10</sup> s. 63.092(3), F.S. Unless good cause is shown, a home study is not required for adult adoptions or when the petitioner for adoption is a stepparent or a relative.

<sup>11</sup> *Id.* DCF performs the preliminary home study if there are no such entities in the county where the prospective adoptive parents reside.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> s. 63.125(1), F.S.

<sup>16</sup> s. 63.125(2), F.S.

<sup>17</sup> s.63.125(3), F.S.

<sup>18</sup> s. 63.125(5), F.S.

### *Firearms and Ammunition*

Current law requires anyone who owns or stores a loaded firearm to keep it safely stored away from any minor who may access it without permission. Specifically, s. 790.174(1), F.S. states:

A person who stores or leaves, on a premise under his or her control, a loaded firearm, as defined in s. 790.001, and who knows or reasonably should know that a minor is likely to gain access to the firearm without the lawful permission of the minor's parent or the person having charge of the minor, or without the supervision required by law, shall keep the firearm in a securely locked box or container or in a location which a reasonable person would believe to be secure or shall secure it with a trigger lock, except when the person is carrying the firearm on his or her body or within such close proximity thereto that he or she can retrieve and use it as easily and quickly as if he or she carried it on his or her body.

Further, except as otherwise provided, Florida law prohibits a state governmental agency and its agents, both public and private, from maintaining a list or record of firearms and/or their owners.<sup>19</sup> Specifically, s. 790.335(2), F.S., states:

No state governmental agency or local government, special district, or other political subdivision or official, agent, or employee of such state or other governmental entity or any other person, public or private, shall knowingly and willfully keep or cause to be kept any list, record, or registry of privately owned firearms or any list, record of registry of the owners of those firearms.

In addition to criminal sanctions, violation of s. 790.335, F.S., may result in the assessment of a fine up to \$5 million for governmental entities under specified circumstances.<sup>20</sup>

With limited exceptions, the Legislature occupies the “whole field of regulation of firearms and ammunition,” including ownership and possession.<sup>21</sup> Therefore, a state governmental agency and its agents, without proper statutory authority from the Legislature, cannot regulate the storage, use, and possession of firearms and ammunition.

Current statutory law relating to the regulation of firearms and ammunition, while applicable to the adoption process, does not expressly cross-reference adoption statutes; nor are the regulation of firearms and ammunition requirements cross-referenced in adoption statutes. However, DCF promulgated a rule, Rule 65C-13.030(5)(h)(6), Florida Administrative Code, relating to licensed out-of-home care safety and the location of firearms and ammunition, which provides:

Dangerous weapons shall be secured in a location inaccessible to children. Storage of guns shall comply with the requirements in Section 790.174, F.S. Weapons and ammunition shall be locked and stored separately, and in a place inaccessible to children.

On December 1, 2009, DCF published a memorandum acknowledging that it lacked the current statutory authority for this rule. The memorandum states that DCF has eliminated the requirement and will ensure that it is removed from the Florida Administrative Code.<sup>22</sup>

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<sup>19</sup> Exceptions are provided for in s. 790.335(3), F.S.

<sup>20</sup> s. 790.335(4)(c), F.S.

<sup>21</sup> s. 790.33, F.S.

<sup>22</sup> Memorandum from DCF General Counsel and Director of Children’s Legal Services to the Director of the Office of Family Safety (Dec.1, 2009) (on file with FL House of Representatives Health Care Services Policy Committee).

## **Effect of Proposed Changes**

This bill creates s. 63.0422, F.S., to prohibit adoption entities from conditioning adoption decisions on the lawful possession of firearms by prospective adoptive parents. Specifically, the bill prohibits adoption agencies or entities, whether public or private, from making adoption suitability determinations based on the lawful possession, storage, or use of a firearm or ammunition by any member of the adoptive home. The policies created by this bill are consistent with existing laws regulating firearms.

Additionally, the bill prohibits an adoption agency or entity, whether public or private, from requiring an adoptive parent or prospective parent to disclose information relating to a person's lawful possession, storage, or use of a firearm or ammunition as a condition to adopt. The effect of this change clarifies the applicability of s. 790.335, F.S. to adoptions and ensures that adoption agencies or entities are not keeping, or causing to be kept, any list, record, or registry or firearm ownership.<sup>23</sup>

The bill also prohibits an adoption agency or entity from restricting the lawful possession, storage, or use of a firearm or ammunition as a condition for a person to adopt. The effect of this change reiterates in the adoption statutes the prohibition against regulation of firearm possession, storage, or use by anyone other than the Legislature.<sup>24</sup>

The bill requires as a condition of licensure, that child placing agencies comply with the requirements of ss. 63.0422 and 790.335. The effect of this change will increase accountability on child placing agencies by making it a condition of licensure that they comply with laws related to firearm regulation.

The bill increases the DCF's authority to deny, suspend or revoke a license of a child placing agency based on failure to comply with ss. 63.0422 and 790.335, relating to adoption and registration of firearms. The effect of this change will enhance accountability for child placing agencies that fail to abide by laws related to firearm regulation.

Finally this bill will require prospective adoptive parents to acknowledge in writing the receipt of verbatim statutory language relating to the safe storage of firearms. The effect of this change will ensure that prospective adoptive parents are aware of the current laws that require the safe storage of firearms and the penalties for failure to abide by such safe storage laws.

### **B. SECTION DIRECTORY:**

Section 1. Creates s. 63.0422, relating to adoption.

Section 2. Amends s. 409.175, relating to licensure of family foster homes, residential child-caring agencies, and child-placing agencies; public records exemption.

Section 3. Provides an effective date of upon becoming law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

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<sup>23</sup> s. 790.335, F.S.

<sup>24</sup> s. 790.33, F.S.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill requires DCF to promulgate a form by rule.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On January 12, 2010, two amendments were adopted by the Health Care Services Policy Committee.

- The first amendment clarifies in law that an adoption agency may not base the suitability of persons to adopt a child based on their lawful possession, storage, or use of firearms or ammunition.
- The second amendment increases accountability on child placing agencies to ensure that they follow the provisions of adoption that this bill would create and also the prohibitions against registration of firearms. The amendment also requires that prospective adoptive parents receive and acknowledge in writing the receipt of a copy of the section of law relating to the safe storage of firearms.